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No. 337

In the Supreme Court of the United States

OCTOBER TERM, 1930

BOSTON PRESSED METAL COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

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BOSTON PRESSED METAL COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the petition in this case.

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875, should be construed to deprive the petitioner of the right which it otherwise would have had to recover taxes for the year 1917 which had been paid by application of a credit of part of an overpayment of 1918 taxes after the statutory period of limitations for collection of the 1917 taxes had expired, and if so construed, whether that section violates the Fifth Amendment.

This question includes that involved in *Graham and Foster, Co-partners, etc.*, v. *Goodcell, Collector*,

No. 36, October Term, 1930, certiorari granted March 3, 1930; in *Magee* v. *United States,* No. 65, October Term, 1930, certiorari granted May 19, 1930; in *Oak Worsted Mills* v. *United States,* No. 104, October Term, 1930, certiorari granted June 2, 1930; and in *Taft Woolen Company* v. *United States,* No. 105, October Term, 1930, certiorari granted June 2, 1930, cases which are now before this Court.

Except as to the collection, the facts are substantially the same in the instant case as in those cases. In those cases the tax in dispute was collected. In the instant case the tax was paid by application of a credit from an overpayment of taxes for the subsequent year. It seems unnecessary to discuss at this time the petitioner's contention that its position, because of this distinction, is better than that of the taxpayer in the cases mentioned above.

In the instant case, as in the case of *Magee* v. *United States, supra,* suit was brought after the passage of the Revenue Act of 1928.

The pertinent dates in the instant case are as follows (R. 6, 7):

March 30, 1918, return for 1917 filed.

June 16, 1919, return for 1918 filed.

January 7, 1921, additional assessments of taxes for 1917 and 1918 made.

February 24, 1921, claim in abatement for 1917 and 1918 taxes filed.

March 30, 1923, expiration of five-year period for assessment and collection of tax for 1917.

March 3, 1924, claim for refund of 1918 taxes filed.

August 20, 1924, claims in abatement for 1917 and 1918 rejected.

August 27, 1924, claim for refund of 1918 tax allowed in part.

January 7, 1925, part of an overpayment of 1918 tax applied as a credit against unpaid additional assessment for 1917.

July 14, 1928, claim for refund of a sum including the above credit filed. This claim was duly rejected.

March 27, 1929, suit brought.

The Court of Claims held that Section 611 of the Revenue Act of 1928 barred recovery. (R. 8.)

Since the same question is already before this Court in several pending cases, the United States does not oppose the granting of the writ of certiorari.

Respectfully submitted.

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